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U.S. DISTRICT COURT  
N.D. OF ALABAMA

## Intro 2

42807-5-T

I will give reference to where the statements are in the record and which laws and citations are referred to as I develop the argument. I will tie together the facts with the rules to be applied to show where the court and the defense council erred in the trial and how the errors prevented a fair trial, misled the jury, or violated due process, under the circumstances of the case.

#### Ineffective assistance of Council:

The council at my trial was ineffective. The 6<sup>th</sup> Amendment U.S. Constitution and article 1 sect. 22 of 10<sup>th</sup> State con. Guarantee right to effective assistance of council (Strickland v. Washington 466 U.S. 668, 80 Led. 2d 674 (1984)).

Council is ineffective when its performance falls below the objective standard of reasonableness and defendant suffers prejudice (Strickland 687). Prejudice exists when there is reasonable probability, that for council errors, the outcome would "likely" been different (Henderson 78) (917 P2d 563) (129 Wn 2d 78)

Failure to develop defense presentation was and is a deficiency in trial preparation, not a trial strategy 528 U.S. 992 (1999) U.S. v. Mosqueca 816.F. Supp 168 // U.S. v. Sera 267 F.3d 872.

Lack of Investigation, presentation, objection to evidence, jury instruction, adversarial process and total defense strategy = I.A.C. (Strickland 687 – Henderson 563 – Sera 872).

The purpose of rules of evidence is to prevent presentation of "facts" by deception. Key misrepresentations are evidence which does not represent the facts at the "time of the incident". Testimony of circumstances which could have changed in time, also misrepresenting the conditions at the time; such evidence is to be objected to by defense and suppressed by the court.

Pictures taken during daylight hours, when neighborhood cars were at work, were entered into evidence (pg. 97 L. 8-9) when the police stop occurred at night when the population of parked cars was greater. The testimony purported that spaces were available to park and pull over but the pictures didn't represent the visibility and parking conditions, ditches, mailboxes, garbage cans, trees and other obstacles , as well as distracting flashing emergency lights, present during the night of the police stop (Pg. 176 L. 11-25; Pg. 177 L. 1-25). (Pg 95-1-18)(A 93-1-25)(A 90-3-6)(Pg 92-10-25)

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This was coupled with testimony by leading questions, of speculative fictitious people, and bicyclists who could have been injured but, in fact, were not there. That contention was objected to (pg. 92 L. 25; pg 93 L. 1-25).

I asked my defense (947 P 2d 700) to make a video or present pictures of nighttime conditions which he failed to do. He also allowed the pictures to be placed into evidence without looking at them (pg. 90 L. 1-5). *Rules of Evidence 401 - 403 Fed.*

*978 P2d 514 28 P3d 10 Rainey*

I asked him to provide maps and distance calculations to dispute time and distance arguments of prosecution which he also failed to do. Defense failed to point out that testimony of the officer omitted that he could not verify that the parking situation had not changed in between the time of the traffic stop and the time the pictures were taken. There was no documentation or pictures taken of where cars were parked on the night of the traffic stop.

Another violation of the Rules of Evidence on “the ultimate issue of guilt” was that the police officer’s testimony as an expert called the conduct a crime. He used the terms “eluding” (pg. 105 L. 3-4) and “reckless” (pg. 87 L 7-8), something that only the jury is to decide. This was done after the court instructed the prosecution and the officer to give facts and not conclusions (pg. 89 L. 24-25). *(PA 107-1-25) 970 P2d 313 941 P2d 666*

Defense missed this obvious error and the repeat of the term “recklessness” later in the trial without either the court or defense’s objection and correction (**cite this in trial transcript**). (then cite other law)

Lesser Offences:

Put in defense failure issue section and / or in jury instruction issue section

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## Statement of Case

When el stated trial council presented no evidence, el meant, no pictures, maps, calculations of speed time and distance, favorable to the defense and Rebut assertions of state. The state was free to paint a picture favorable to their version.

While council didn't fail to cross examine or challenge all the states evidence, it failed to do so on many critical points.

The Rule of Evidence should prevent the Jury from hearing False and misleading evidence, not hearing and then have defense attempt to Repair the damage by argument. Especially if state is advised in advance not to do it by the court. (Pg 14-23-25) (Pg 15-1-7) (Pg 114-1-9) (Pg 105-21-25)

The pictures should have been objected to before the (Pg 96-17-18) Jury saw them and sustained by the court, not (Pg 97-8-9) admitted with the provision you can assault them (Pg 96-14-15) misleading and don't represent the scene at the (Pg 89-24-25) time of incident. As backwards, prejudicial to (Pg 90-1-5) defense. (Fed.R.Evid. 401-403) (Strickland I.A.C. 68)

The presentation; by leading questions, of fictional potential victims traffic, Pedestrians, Bicyclists and oncoming traffic, was objected to several times. (Pg 93 L 1-25) But the court "allowed" as it "would indicate where he driven" Convincing Jury driving was Reckless, A necessary Element of Elude. unnoticed and not objected to by defense. ineffective assistance of council

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## Statement of CASE

the Requirement "Immediate Stop" is removed in part 2 of the same statute 416.61.024(2) so that conclusion is wrong, but for courts and defences failure to instruct it, its what the Jury was left to believe, is the law. A major and should be Reversible ERROR.

the conduct "speeding up, swerving side to side while signaling left, then right, then left then right erratically" is purely hype. Even in terms of traffic infraction its not enough to prove infraction nonetheless the implied Recklessness. Note also no speed is given no citations were issued on these purported facts. Extrapolate that these would be the actions also for someone trying to pull over or get out of the way, as testified to by defendant. (Pg 150-1-9) A lawful reason for conduct bars prosecution. This was missed by defense council and missed the Jury. Several half truths don't make one whole truth.

The concept that if you claimed someone else was the driver, arguing that the conduct described doesn't prove the crime charged would be a conflict of testimony, as though you only entitled to one line of defense. So if jury buys this "amended" version of how many people were in the van, the state doesn't have to prove the charge. If your alibi fails you automatically guilty of the crime charged? Ridiculous scenario.

## Statement of Case

Law enforcement officials not allowed to give opinions on ultimate issue of whether the defendant acted illegally.

Berry v. City, 59 Detroit 25 F3d 1342 (6th Cir 1994) (Fed R Evid 403)

Leading question, with implication of evidence and fact not established  
 "You indicated defendant could have immediately pulled over safely. He didn't do so" (Pg 92-15-18)

Leading Question, with unestablished conclusions, designed to mislead jury into believing those facts were proven.

Misled and objected to by defense. (I.A.C.) Rule Evid 401-403 particular attention to wording used, as opposed to what wording would have properly presented the truth.

Q Are they accurate and fair are those photographs accurate and fair depictions of the incident scene?

A Yes, they are. Missing is at the time of the incident defense failed to clear up this misrepresentation (IAC)

Leading question with misleading Conclusion (Pg 90-9-13)

"Once the defendant did not immediately pull over safely as he could have". deceptive practice unobjectionable pointed out as misleading conclusion. (IAC.)

Q There were locations to safely pull over is that what the photographs depict? A Yes. They do. It's leading question, with false conclusion built in leaving out "at the time" clause but against the Rules. (IAC)

Q (Leading) Numerous locations to pull over safely

A Yes there is. Note answer is not yes there was the difference being was getting you around having to lie about at the time. Freylian But obvious.

## Statement of Case

Craftiness would not win a case if prosecution and defense were evenly matched. The prosecution having groomed their witness better, being the only one to produce evidence, (pictures + maps) Jury Instructions, erroneous Rulings on evidence, Phantom victims, and misleading statements about facts and law, prevailed.

If appellate Lawyer points out I can't prove, By the Record, that defense spent 2 hrs on case before trial, nor suggest that state spent much more, I can suggest the Results speak for themselves, not in the losing of the case, but the sheer volume and quality of presentation. (I.A.C.) that length of time spent on preparation and on argument may also reflect itself show prejudicial (states using 14 pages for defenses), but coupled with all the other mistakes it a trainwreck. I am greatfull for the concept of I.A.C and the procedure of defendants supplemental brief, because I believe this is a clear violation of one and exampled why there's a need for the other.

the research into the jurisdiction defense was pushed by the defendant against council who insisted the area travelled, was agreed by the city. When I got a friend working in a city certified zoning map he had my before the trial presented the motion. Then he never got the agreement itself until the prosecution gave a copy in court. Then he never argued or cross examined the requirements in the agreement to see if it complied with Requirements of the passing the exam. The prosecutor asked about attending the academy but not if he took and passed the tests. From jail its difficult for me But I've a friend inquiring about his being qualified. The issue of his qualification remains unanswered. As well as the question of the right to operate without notification before, during or after incident. Since council made no inquiry into the requirements being met it was up to the court and prosecution. The court made an effort and of course the prosecution stuck to its version, defense remained silent.

Begun my

Since appeals are based on the conduct of the trial and its errors and the findings of the Jury can not be questioned will bring up with what the Jury found the facts to be and how and why they were mislead. I will also try to show how the Ruled Evidence and lack of argument and presentation lead to the false conclusion of what was proven.

I will also attempt to show how the statutes as applied in my case fail to make a clear delineation as to where the lines are in severity of the crime, making it hard to determine for a Jury or accused, which level of crime the conduct above rises

too. Some of the problem in presentation is finding case law that involved as little

conduct and prosecutors usually dismiss such charges. The success of hinge

such cases lies in plea deals the success of

which leads prosecutors to feel they don't have to prove much. I waited until I got my copy of trial to research the Jury

instructions, the statutes involved, Evidence Rules and Case Law. After fighting to

get access to Law Library for the appeal the jail staff denied me access giving me only 6 hrs access after receiving the

ID  
Jury Instruction

In failing to instruct the jury of the, in the  
statute, defense of "driving after signal to  
stop was reasonable under the circumstances"  
was extremely prejudicial equal to leaving  
out a key element and an affirmative defense,  
Reversible error. (RCW 46.61.024(2) W.P.I.I.94.10  
(Pg 202-23-24) (Pg 190-9-11)

## Misleading Evidence

I had asked my Lawyer to take night time pictures or a video, with lights on high and Low Beam, so what can be seen is shown he refused to do so. (pg 177-1-5)

The Rules of Evidence are to Block misleading Evidence, not allow it in with the defense to argue against it. Once the damage is done. (ER-401-403). At the time link is also on Evidence no -no. defense blew off the defense. (698 P2d 598)

Then comes the non existent victims of the conduct "on coming Traffic, Bicyclist (implied Children), pedestrians". Objected to by defense and upheld by the Court "I am going to allow the answers that the officer has given would indicate where he's driven." What's that got to do with showing where his driver nothing. A clear ridiculous ruling.

757 P2d 889, 110 Wn2d 598, 663 P2d 482 (1983)

daytime pictures

the pictures introduced without objection of the next day or later, without being looked at by the defense "I don't need to see them (Pg 90-1-8) (698 P2d 598) (Pg 96-14-15) (96-14-15) (Pg 92-25) (Pg 93-1-25) (97-8-9) (Pg 96-17-18)

Leading Question loaded with false conclusions  
"once the defendant did not immediately pull over safely as he could have, what you observed." (Pg 90-9-13)

"and you indicated that the defendant could have immediately Pulled over Safely He didn't do so" leading, Prosecutor Testifying to facts that in Both instances was not what the officer had at that point testified to, nor latter except by inference of the pictures taken at another time.

The defense failed to call him on it, straighten it out and stop it. (I.A.C Strickland)  
thus the next day pictures were introduced.

as a accurate and fair depiction of the incident scene. By inference and omission misleading pictures and no testimony that the parking at the time was affirmed no one stayed there till the day time pictures were taken none the less 3 Blocks unreasonable time to figure out if it was get out of the way or pull over.

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## lesser offenses

Either party may request an instruction of a lesser crime State v. Lyon 96 Wn 477, 979 P2d 926 state v. gallegos 73 Wn App 651 Washington Pattern Jury Instructions 155+4.11 (W.P.J.I) when a crime has been proven and a reasonable doubt exists as to which to choose - choose the lowest one.

757 P2d 289, 110 Wn 2d 598, 663 P2d 482 (1993)

W.P.J.I 4.72 + 501.5.10

Lesser offenses give the Jury an opportunity to pick which crime the Evidence better fits, and by comparison, easier to decide were the legislature meant the line to be. It also frees the jury to not be in an all or nothing position having a choice. This defense would have been a good strategy. All three charges have lesser offenses, with unclear lines. defense failed to present this line of defense. Elude has (46.61.024) the lesser failure to obey (46.61.022) a misdemeanor instead of felony. It involves not stopping and doesn't require willful, wanton, needless recklessness.

Obstruction has a lesser charge of resisting.

Harrassment has a lesser charge of assault II assault being a threat of force also.

Especially when statute don't give specific time or distance delineations as to the line of lawful

## Leading Questions and False Information

after being warned not to comment on the "climate issue" of guilt, stick to the facts, not conclusions" (pg 14-24-25) (pg 15-1-7) on the "he was eluding" statement Judge not defense stopped the trial and attempted (pg 105-3+4) to repair the damage. Showing how asleep at the wheel the defense was. After that the officer did it again on Recklessness (Pg 87-6-9) this time it was missed by both the court and defense leaving the jury to believe that an expert had testified as to what recklessness was. A clear violation of Rules of Evidence and Case Law (970 P2d 313) (941 P2d 661) (64 P3d 92) (871 P2d 135) 160 P3d 106 + 1080) (971 P2d 440)

Pg 92-15-18 FALSE conclusions and facts not proven designed to mislead jury as evidence "you indicated defendant could have pulled over safely. He didn't do so" unobjectionable to defense.

After rejecting "Some one else bailed out" (Pg 49-24-25)

Backup was called for to search for other suspect.

arguing that if your first line of defense or you were not the driver diserves you of arguing no crime was committed. So if the jury buys the amended version, the state doesn't have to prove its case. My defense relied on this and failed to prepare and argue the charges on there merit. OF COURSE I am Entitled to a defense to charges

## OBstruction

on the OBstruction charge the language of officer in testimony, was he resisted, was resisting arrest. (Pg 114-1-9) (Pg 62-1) Had my defense instructed the Jury and argued, as well, this language of an lesser offence in all likelihood it would have changed the verdict (Strickland 653). I.A.C. (W.P.J.I 120.05-6)

on Harassment the statement he said "he would kick my ass", even if true, would better fit the lesser charge of 4th degree assault which is threaten to injure now or in the future. The defense should have instructed that language so that the Jury could decide which better fits the Evidence.

A lawfull reason for conduct is defense to criminal intent. Twice defendant gave a lawfull Reason for the conduct "what you do to try to get out of the way, cause 90% time that's what you do when an Emergency Vehicle is behind you until you figure out he wants the vehicle your into Pullover. (Pg 150-11-25) (Pg 151-1-5) (Pg 55-15-23)

Especially in a situation of a "short pursuit" by the pursuing officer (Pg 38 1+8) if three Blocks without intersections can be considered a pursuit at 30 mph, in a few seconds.

## Recklessness

It's unfortunate that the distance and time designation is not put into the laws when it could be. Especially when the lines are between guilt and innocence and between misdemeanor and felony. The lack of clarity invites uncertainty for citizens, a portion of criminality and gives as to when to convict. Both being challenges for vagueness and ambiguity. Void for vagueness.

All traffic laws are designed to prevent property damage and injury. So to claim potential injury does not show recklessness, but at most the infraction does not show recklessness, but at most the infraction - negligence.

So what is the difference between infraction - negligence  
ie. the likelihood, no traffic no likelihood.

Recklessness - Felony Elude? The circumstances were there traffic or pedestrians, there would have been Recklessness and probably a wreck, but since there were none and no proof that driver would have driven into them pure speculation.

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## Void For Vagueness

or unlawful conduct making it hard  
for the public and juries to know when  
you are crossing into criminal conduct or  
from infraction to negligent to Reckless  
To Felony Grade.

Where statutory language is amenable  
to more than one reasonable interpretation,  
it is deemed to be ambiguous State v. Keller  
143 W2d 267

Failure to instruct jury on Element of crime  
violates constitutional Right State v. Smith 131 W2d 258

Sufficiency of the evidence to support conviction  
State v. Whitcomb 753 P2d 565 (1988)

disg-ann Fair Lenjini 970 P2d 313 - Speed not enough  
to convict for Eluding. ER. 701-702-704 (999 P2d 34)

As most of my defense is Ineffective assistance  
of Council(I.A.C.) the lack of instruction, Strategy  
and presentation is the core. (Strickland + Henderson)

1. False concepts and missing instructions presented to Gary that immediate stop is only defense to eluding
2. that any driving that could cause injury is Reckless driving
3. that if someone could have been there its Reckless driving
4. that there was several places to pull over at the time of incident.
5. that there was not another lawful reason for driving conduct
6. that there was not a lesser charge which better fit the evidence for the charge of Elude and obstruction and Harassment
7. that there was not a lesser charge of resisting arrest which better fit the evidence for the charge Harassment
8. that there was a lesser charge of assault which better fit the evidence for the charge Harassment
9. that the officer was fully commissioned Washington officer as required by mutual assistance agreement and he had authority to act independently without notification.
10. that Gary could consider hypothetical victims and scenarios as facts to prove Recklessness

## Conclusions I

PICTURE  
ERROR

the trial court and defense erred in admitting daytime pictures as evidence of what could be seen at night and pictures of alleged parking place taken at another time. → Retry without misleading pictures or with accurate pictures of the street visibility at night, while admitting having no proof of parking at time of incident.

INSTRUCTION  
ERROR

(1) Trial court and defense Errored in not instructing Jury to In the statute defence of "Reasonable under the circumstance to stop" 46.61.024(2). Overturn OR ORDER Retry with proper Jury Instructions.

INSTRUCTION  
ERROR

(2) Trial court And defense Errored in not instructing on Elements of lesser charge of failing to obey 46.61.22. So Jury could decide if Evidence Better Fitted lesser charge, instead of Felony Elude  
Retry with both instructions

(3) Trial court And defense Errored in not instructing on elements of lesser charge of Resisting ARREST  
So Jury could decide if Evidence Better fitted the lesser charge, instead of OBSTRUCTION  
Retry with Both instructions

(4) trial court and defense Errored in not instructing on elements of lesser charge of Assault in the third degree . So Jury could decide if Evidence Better Fitted the lesser charge, instead of Harassment.  
Retry with Both instructions.

Conclusions II

(5) Trial court and defense erred in allowing leading questions and speculative testimony on non-existing potential victims.

Retry and bar leading questions and misleading speculative evidence to sway Jury.

(6) Trial Court and defense erred in not examining officers having passed the test required in the mutual agreement to Be a fully Commissioned Washington Police officer. Retry and require full examination of the law.

(7) Defense Erred in not raising the defense that under the circumstances of the case all three statutes are constitutionally void for vagueness and ambiguity. Overturn or void under the circumstances.

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SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR CLARK COUNTY  
DEPARTMENT NO. 10  
PO BOX 5000  
VANCOUVER, WA 98666-5000



SCOTT A. COLLIER  
JUDGE

TELEPHONE (360) 397-2170  
FAX (360) 397-6078

December 21, 2011

Teddy J. Pyle  
Clark County Jail  
PO Box 1147  
Vancouver WA 98666

Re: State vs Pyle  
111014941

Dear Mr. Pyle:

Enclosed is a copy of the Order for Jail Law Library Access.

Sincerely,

A handwritten signature in black ink that appears to read "Tracy J. Haxby".

Tracy J. Haxby  
Judicial Assistant  
Dept 10 Judge Collier

Enclosure  
Cc: Court file

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CLARK COUNTY CUSTODY DIVISION  
INMATE REQUEST SLIP

INMATE NAME: Last Pyle

(ONE NAME PER KITE)

First Teddy

MI Tal

CFN: 28271

CELL # G3-11

REQUEST OR INFORMATION TYPE: (CIRCLE ONE)

JAIL RECORDS

Sentence

Good Time

FISCAL

Commissary

Money Account

CLASSIFICATION

Program Request

Cell Change

Admin Segregation

JAIL

Pod Trusty

Property

LAW LIBRARY

JAIL ADMIN

Denied Mail

Telephone

Suggest Improvements

Religious Requests

MEDICAL

Medical Diet

FOOD SERVICES

Religious Diet

CORRECTIONS

Work Crew Screen (Court Ordered only)

Other \_\_\_\_\_

REQUEST: (ONE REQUEST PER KITE BE SPECIFIC)

Access law library, I have an Appeal Brief Due within 30 days of receiving my Record of Proceedings. An Appeal is a legal process that requires law research just as a trial. Both are rights it took weeks to get access after the trial from the court. Now would you decide I don't have access to work on my appeal Judge signed the order after the sentence for the appeal, what's the matter with this does the court of appeals have to give an order too!

INMATE SIGNATURE: Ted G. Pyle

DATE: \_\_\_\_\_

RECEIVING OFFICER: (PRINT) Hatcher

PSN: 4360 DATE: 4-21-12

FORWARDED TO: JAIL- CLASSIFICATION- JAIL ADMIN- JAIL RECORDS- FISCAL- MEDICAL- FOOD SERVICE- JWC-CORRECTIONS

NAME: Class Sgt.

DATE: \_\_\_\_\_

ANSWER TO REQUEST:

(Sentence was Nov 16 2011) You were sentenced on 4/11/12 April 11  
The court order is dated 12/21/12 (8 months from now) Dec 21

You will have to get your attorney to produce another court order — the one we have is no longer valid.

RESPONDING OFFICER/CLERK: (PRINT) Sgt Anderson PSN: 3642 DATE: 4/21/12

42807-5

I was given access to law library to work on my appeal by court order. By the time I got my record I went twice and was cut off by jail staff. Approved and denied several times in the middle of time frame to prepare have sent copies of my denials to clerk of the court of appeals. So this represents my incomplete version as I was stopped from finishing my research. I was going to have it typed up by a friend as part of this is. I also want to state that I want oral argument before the court to straighten up any mistakes I may have made.

Lel M,

RECEIVED  
MAY 7, 2012

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON